

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEALS NOS 7 & 8 of 1989

BETWEEN:

KINGSLEY BOWMAN

Appellant

and

HANSRAJ MATADIAL

Respondent

Before: The Honourable Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice Byron J.A.
The Honourable Mr. Justice Redhead J.A. (Ag.)

Apparances: Mr. E. Robertson for the Appellant
Mr. B. Commissiong for the Respondent

1992: April 10; July 24

JUDGMENT

FLOISSAC, C.J.

On the 26th May 1989, Singh J. made an interlocutory order in suit no 222 of 1988. The terms of the order were "that the plaintiff do lodge with the Registrar of the Supreme Court within 21 days from the date hereof, the sum of \$30,000.00 as security for the defendant's costs of this action. Failure of the plaintiff to so do, this claim by the plaintiff will stand dismissed with costs to the defendant to be taxed if not agreed."

On the 23rd June 1989, on an application by the appellant to amend the interlocutory order, the learned judge ruled that on the 17th June 1989, the appellant's claim in his statement of claim had stood dismissed by reason of the appellant's failure to comply

with the terms of the interlocutory order. Five days later (i.e. on the 28th June 1989), the learned judge gave judgment in favour of the respondent on his counterclaim and made an order against the appellant's solicitor under Order 62 R 8 of the Rules of the Supreme Court.

On the 27th June 1989, in Civil Appeal No. 8 of 1989, the appellant filed a Notice of Appeal against the judgment or ruling of the 23rd June 1989 but failed to file the Record of Appeal as required by Order 64 R 11 of the said Rules. On the 28th July 1989, in Civil Appeal No. 7 of 1989 and with this Court's leave granted on the 19th July 1989, the appellant filed a Notice of Appeal against the interlocutory judgment, but failed to serve a copy of the Notice of Appeal on the respondent as required by Order 64 R 7 of the said Rules.

As a result of the appellant's defaults in compliance with Order 64 rules 7 & 11, both parties have made applications to this Court. The respondent has applied for orders dismissing both appeals for want of prosecution and the appellant has applied for an order extending the time for service of the Notice of Appeal in Civil Appeal No. 7 of 1989. Thus, the sole question which this Court is required to decide is whether the extensions of time should be granted or whether the appeals should be dismissed for want of prosecution.

To answer that question, it is necessary to examine the four relevant circumstances surrounding the appellant's delays in compliance with the said Rules. Those circumstances are (1) the lengths of the delays (2) the appellant's reasons, excuses or explanations for the delays (3) the reasonable prospects or otherwise that the appeals will succeed if the extensions of time are granted and (4) the degree of prejudice to the respondent if the extensions are granted and the appeals are allowed to proceed.

Although the lengths of the delays are not minimal, the reasons for the delays are not wholly satisfactory and there will be some .

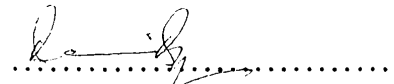
prejudice to the respondent if the extensions are granted and the appeals are allowed to proceed, nevertheless we consider that the appellant has an arguable appeal based on the time given to provide the security and the amount of security.

For this reason and in view of the special surrounding circumstances of this case - particularly the fact that the interlocutory order has resulted in final judgment without a trial - we grant the Appellant leave to serve the Notice of Appeal in Civil Appeal No. 7 of 1989 and to file the Record of Appeal in Civil Appeal No. 8 of 1989 as if these Notices of Appeal had been filed on the date of this judgment. We refuse the applications to dismiss the appeals for want of prosecution.

The Appellant shall, however, pay to ^{the}_^ Respondent the latter's costs of the applications heard by this Court. Such costs shall be payable in any event.



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Sir Vincent Floissac
Chief Justice


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C.M.D. Byron
Justice of Appeal
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A.J. Redhead
Justice of Appeal